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IN THE

Supreme Court of the United States

OCTOBER TERM 1970

NO. 1439

CENTRAL GULF STEAMSHIP CORPORATION,

Petitioner,

versus

GRACE LINE, INC.

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

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Grace Line, Inc., as owner of the S.S. SANTA VICTORIA, granted Central Gulf Steamship Corporation, as time charterer, written authority to extend the one-year limitation for bringing suit for cargo damages through a certain date and in advance of that date refused in writing to grant further extension. Central Gulf Steamship Corporation, despite this knowledge, granted cargo a further extension of time. Cargo's subsequent suit against Grace Line, Inc., was barred by the statute of limitation, being filed too late. *United Fruit Company v. J. A. Folger & Company*, 270 F.2d 666 (5th Cir. 1959).

The District Court dismissed cargo's suit against vessel owner, but not time charterer's third-party complaint.

The trial court held that the cause of action for indemnity, based upon the charter agreement, was not barred. The time charter between vessel owner and charterer was a Government Form Charter, approved by the New York Produce Exchange. All of the defenses of the Carriage of Goods by Sea Act[1] were incorporated into this agreement by utilization of the "USA Clause Paramont". The decision of the District Court circumvented the Fifth Circuit's decision in *United Fruit Company v. J. A. Folger & Company, supra.* Time charterers under the decision of the District Court could deal with cargo as they chose, and at some later date, years after the expiration of the one-year statutory period of COGSA, bring suit against the vessel owner.

The Fifth Circuit correctly held that the indemnity cause of action by the time charterer against the vessel owner was barred by the statute of limitation under the Carriage of Goods by Sea Act. To hold otherwise would have denied the vessel owner its legal defense of limitation under the Carriage of Goods by Sea Act, *supra,* which was incorporated in the Bill of Lading issued by time charterer and in the time charter itself.

The Fifth Circuit in support of its decision correctly states,

> ". . . Indemnity may not be awarded without the support of liability on the part of the indemnitor to the person injured and since Grace was no longer obligated to Royal, Grace could not be liable in a cause of action for indemnity by Central. *United Air Lines v. Wiener,* 355 F.2d 379, 403 (9th Cir. 1964); *American Tob-*

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[1] 46 U.S.C.A. § 1300 et seq.

acco Co. v. Transport Corp., 277 F.Supp. 457 (E.D. Va. 1967).

"Even if Grace could be held liable for the damaged cargo as the result of an unauthorized extension of the period of limitation by Central, no right of indemnity would exist. By extending the period of Grace's liability to Royal, Central interferred with Grace's defense of limitation and thus would operate to discharge the indemnitor. 42 C.J.S. Indemnity #40 (1944)."

The petition should be denied because there is no conflict between Circuits on the issue correctly decided by the Fifth Circuit.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief in Opposition to Petition for Certiorari was posted, first class, postage prepaid, to Robert B. Acomb, Attorney for Petitioner, 28th Floor, Louisiana and Southern Life Building, New Orleans, Louisiana 70112, this day of May, 1970.

JOHN W. SIMS

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